

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS A. HOBBS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Del Rio, TX

*Docket No. 99-1776; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office improperly determined that appellant's application for review was not timely filed.

On April 2, 1997 appellant filed a claim for occupational disease for a bilateral hearing loss. The Office, in a September 19, 1997 decision, denied the claim on the grounds that fact of injury was not established as appellant had not submitted medical evidence sufficient to establish that his hearing loss was caused by factors of his federal employment. In a letter received by the Office on Monday, September 21, 1998, appellant requested reconsideration and submitted a copy of an October 15, 1997 report from Dr. Kenneth B. Aspinall who reported that appellant's hearing loss was consistent with the noise exposure at his federal employment. By decision dated March 15, 1999, the Office found that appellant's request for reconsideration was untimely and that the evidence submitted did not establish clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right.² Rather, the Office has the discretion to reopen a case for review on the merits, on its own motion or on application by the claimant. The Office must exercise this discretion in accordance with section 10.607 which provides that the Office will not review a decision denying or terminating benefits unless the application is filed within one year of the date of that decision.³ The Board has held that the

¹ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8128(a).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 109 (1989).

³ 20 C.F.R. § 10.607 (1999); *Larry J. Lilton*, 44 ECAB 243, 249 (1992).

imposition of the one-year time limitation for filing an application for review is not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁴

In the present case, the Office's most recent merit decision was issued on September 19, 1997. Consequently, appellant was required to file his request for reconsideration by September 19, 1998.⁵ However, because that date fell on a Saturday, a nonbusiness day, appellant's one-year deadline for requesting reconsideration was extended to the next business day or until Monday, September 21, 1998.⁶ In this regard, the record reveals that the Office received appellant's request for reconsideration on September 21, 1998. Accordingly, the Office erred in finding that appellant's request for reconsideration was untimely and it abused its discretion in denying the request for reconsideration as untimely. Because the Office erroneously reviewed the medical evidence submitted in support of reconsideration under the clear evidence of error standard, the Board will remand the case for the Office for review of the evidence under the proper standard of review.

Accordingly, the March 15, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
August 24, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Leon D. Faidley, Jr.*, *supra* note 2 at 111.

⁵ *See* 20 C.F.R. § 10.607(a) (1999).

⁶ *Gary J. Martinez*, 41 ECAB 427 (1990).